## REMARKS

## I. STATUS OF THE APPLICATION

Claims 1-23 were filed in the original application. During prosecution of the application, claims 1-23 were cancelled and claims 24-44 were added in the Amendment and Response to Office Action filed January 8, 2003. Claims 24-44 were cancelled and claims 45-71 were added in the Amendment and Response to Office Action filed May 1, 2003. Claims 69 and 70 were cancelled in the Amendment and Response to Final Office Action filed July 7, 2004. Claims 45-68, and 71 were cancelled, and claims 72-107 were added in the Amendment and Response to Office Action filed February 17, 2005. Claims 72-107 were rejected in the Final Office Action dated May 10, 2005.

In an Appeal Brief filed November 9, 2005 the Applicant appealed the Final Office Action of May 10, 2005. In the Decision on Appeal mailed July 31, 2006 the Board of Patent Appeals and Interferences reversed all of the Examiner's rejections. The Office Action mailed September 12, 2006 was made in Response to the Board's rejections. Claims 108-112 are added and claims 80, 81, 85, 89, 90, 102 and 103 are amended in the present Amendment and Response to Office Action of September 12, 2006. Therefore, Claims 72-112 are currently pending.

In the Office Action dated September 12, 2006, the Examiner has made one rejection. The currently pending rejection is:

> Claims 72-107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acta Anaesthesiologica Scandinavica (Vol 39, page 139-141, 1995) (hereinafter "LaDu, 1995") and LaDu (Cellular and Molecular Neurobiology, Vol 11, No. 1, page 79-89, 19910 (hereinafter "LaDu, 1991") and Pharmacogenetics (Chapter 4, pages 309-326) (hereinafter "Pharmacogenetics") and Evans *et al.* (Science, Vol. 286, pages 487-491, October 1999) (hereinafter "Evans") in view of Hoon *et al.* (US Pat. 6,057,105, May 2, 2000) (hereinafter "Hoon") and Hacia (Nature Genetics Supplement, Vol. 21, pages 42047, January, 1999) (hereinafter "Hacia")

and further in view of Ahern (The Scientist, Vol 9, No. 15, page 20, July 1995) (hereinafter, "Ahern"). (Office Action of September 12, 2006, page 1.)

## II. STATUS OF THE REJECTION

**The Claims are not Obvious - Rejections under 35 U.S.C. §103(a)**

In the Office Action of September 12, 2006 the Examiner argues:

"Thus, the ordinary artisan would have been motivated to have packaged the primers, probes, and reagents of Acta Anaesthesiologica Scandinavica, LaDu, Pharmacogenetics, or Evans and Hacia and Hoon which are necessary for determining the genotypes of BchE and CYP2D6 which are associated [with] poor reactions to anesthesia into a kit, as taught by Ahern for the express purpose of saving time and money." (Office Action of September 12, 2006, page 8).

A *prima facie* case of obviousness requires the Examiner to cite to a reference which a) discloses all the elements of the claimed invention, b) suggests or motivates one of ordinary skill in the art to combine the claim elements to yield the claimed invention, and c) provides a reasonable expectation of success should the claimed combination be carried out. Failure to establish any one of these three requirements negates a finding of a *prima facie* case and, without more, entitles the Applicant to allowance of the claims in issue. (MPEP).

### A. Examiner's Combination of References Does Not Teach All Elements of the Claims

#### 1. The Examiner has Failed to Establish the Obviousness of Claims 72-105, and 108-110

Contrary to the Examiner's assertion, the Examiner's combination of references fails to teach all elements of the claims.

For example, none of the Examiner's references, alone or in combination, teach or suggest a computer program comprising instructions which direct a processor to analyze data derived from use of said reagents. In its Decision on Appeal, the Board of Patent Appeals and Interferences expressly considered this element of claim 72:

> "Finally, the kit defined by claim 72 comprises "a computer program comprising instructions which direct a processor to analyze data derived from use of said reagents.""(Decision on Appeal, page 5).

Accordingly, the Board of Patent Appeals and Interferences concluded:

> "In our view, these disclosures (*i.e.*, of the Specification) reasonably support the concept of combining reagents for detecting variant alleles with a computer program to analyze data indicating the presence or absence of such variant alleles." (Decision on Appeal, page 8).

In the Office Action of September 12, 2006 the Examiner improperly dismisses this element of the claims that has previously been expressly recognized and accepted by the Board of Appeals and Interferences:

> "As decided at the Federal Circuit in May, 2004, In re Ngai succinctly states that inventors are not "entitled to patent a known product by simply attaching a set of instructions to that product." Whether the instructions are printed on a piece of paper within the kit or the instructions are printed in the memory of the computer for execution, the instructions remain just instructions. With regard to Claims 72-107, the intended use of the instructions written in the memory or program of the computer would not change the product. Therefore, the different instructions provided in Claims 72-107 do not distinguish over the prior art." (Office Action of September 12, 2006, page 8).

In this assertion the Examiner has made a number of errors.

First, and as pointed out to the Examiner multiple times in the prosecution of this application, claims 106 and 107 do not claim instructions of any kind. This issue has gone unaddressed.

Second, the Board of Appeals and Interferences has already considered the Examiner's arguments with regard to *In re Ngai* (See, for example, Examiner's Answer mailed December 30, 2005, pages 18-22), and has found the Examiner's assertions non-persuasive. The Examiner is bound by the Board's decision.

Third, at the time of its Decision the Board of Patent Appeals and Interferences was in possession of a detailed consideration of *In re Ngai* in the Appellant's Reply Brief filed by the Applicant on March 3, 2006. In its Decision on Appeal of July 31, 2006, the Board of Patent Appeals and Interferences does not rebut a single point or issue raised by the Applicant with regard to the inapplicability of *In re Ngai* to the prosecution of the present application.

Despite these facts, and in plain view of the Board of Patent Appeals and Interferences and its Decision on Appeal, in the Office Action of September 12, 2006 the Examiner argues:

> "Further, with regard to the limitation that the kits contain instructions for using said kit for generating said perioperative genomic profile for said subject, the inclusion of instructions is not considered to provide a patentable limitation on the claims. See In re Ngai, 367 F.3d 1336, 70 U.S.P.Q. 2d 1862 (Fed. Cir. 2004) (holding that an inventor could not patent known kits by simply attaching new set of instructions to that product)." (Office Action of September 12, 2006, page 2).

In this misreading of *In re Ngai* the Examiner continues to make a number of errors. First, the kits of the claimed invention are not "known kits". For example, the Examiner has never indicated where such kits (*e.g.*, kits with "reagents configured such that when exposed to a sample containing target nucleic acid from a perioperative subject, said subject being a patient scheduled for a surgical procedure that has not yet completed said surgical procedure, are sufficient to detect the presence or absence of variant alleles in two or more genes associated with two or more conditions selected from

the group consisting of *BChE, CYP2D6, F5, F2, CACNAIS, MTHFR, MTR, MTRR, CBS, TNF$\alpha$* and *TNF$\beta$* so as to generate a genomic profile for use in selecting a perioperative course of action for said subject") are to be found in the Examiner's references, either alone or in combination.

Second, the Examiner confuses the printed matter instructions of *In re Ngai* with a computer program comprising instructions which direct a processor to analyze data derived from use of said reagents of the claims. As pointed out to the Examiner in the Appellant's Brief "Contrary to the Examiner's misinterpretation, *In re Ngai* does not address, consider or even mention computers, computer programs, computer programs comprising instructions, or computer analysis of data." (Appellant's Brief, page 37) (Emphasis in original). The Examiner's Office Action of September 12, 2006 is silent with regard to these defects of *In re Ngai*.

As pointed out to the Examiner (Appellant's Brief, page 38), computer instructions which direct a processor to analyze data for generating a perioperative genomic profile for a subject as claimed, qualify as statutory subject matter because storage of the computer instructions turns a computer readable medium into a functional component which directly cooperates with the processor. Computer instructions cause computer functions to occur, and are therefore inarguably functional components of the computer system. These facts have been acknowledged by the Board of Appeals and Interferences, and are uncontested in the Office Action of September 12, 2006.

The computer program of the claims does not simply display written instructions to a user of reagents as the Examiner suggests in an attempt to apply the *In re Ngai* case.[1] In contrast, the computer program of the claimed invention instructs a processor to analyze data, *i.e.*, a classically patentable use of a computer programs.[2] The Applicant notes that even if the computer program simply displayed instructions to a user of the reagents, it is still patentable subject matter for the reasons of record (see Declaration of Morris Waxler, Ph.D., and associated discussion). The Examiner has never put forward evidence or reasoning to dispute the functional relationships between the claimed computer-based instructions and other components of Claims 72-105.

---

1 *In re Ngai*, 367 F.3d 1336, 70 U.S.P.Q. 2d 1862 (Fed. Cir. 2004)

2 *Alappat*, 33 F.3d 1543, 31 USPQ2d 1556-1557 (quoting *Diamond v. Diehr*, 450 U.S., 192, 209 USPQ, 10), and *Diamond v. Diehr*, 450 U.S., 192, 209 USPQ, 6.

For at least these reasons, and as accepted by the Board of Appeals and Interferences, "a computer program comprising instructions which direct a processor to analyze data derived from use of said reagents" is a proper and statutory element of claims 72-105. None of the Examiner's references, alone or in combination, teach or suggest this element. In turn, none of the Examiner's references, alone or in combination, teach or suggest the limitation "a computer program comprising instructions which direct a processor to analyze data derived from use of said reagents to indicate an anesthesia treatment course of action." (Independent claim 84.) As well, none of the Examiner's references, alone or in combination, teach or suggest the limitation "a computer program comprising instructions which direct a processor to analyze data derived from use of said reagents to indicate a surgical treatment course of action." (Independent claim 101.)

Third, in the Office Action of September 12, 2006 the Examiner fails to address elements of dependent claims that are missing from the Examiner's combinations of references. For example, the Examiner has never indicated where the Examiner's cited references teach or suggest a computer program for the translation of genetic data "into a risk assessment for treatment options" (claim 74), or "recommendations for treatment options" (claim 75). In order to establish *prima facie* obviousness, the Examiner must point to a reference, or combination of references, that teaches or suggests a computer program with software that analyzes data from the kit of the claimed invention, and generates, for example, recommendations for treatment options based on the presence or absence of variant alleles in *BChE, CYP2D6, F5, F2, CACNAIS, MTHFR, MTR, MTRR, CBS, TNFα* and *TNFβ*. The Examiner has never identified such a computer program in the cited references taken alone, or in combination. Nowhere in the Examiner's cited references is knowledge of variant alleles in two or more genes selected from the group consisting of *BChE, CYP2D6, F5, F2, CACNAIS, MTHFR, MTR, MTRR, CBS, TNFα* and *TNFβ* combined to indicate an anesthesia treatment course of action (claim 84), a surgical treatment course of action (claim 101), a specific clinical pathway of medical intervention (claim 106), or a specific clinical pathway or anesthesia intervention (claim 107). None of the Examiner's references teach or suggest how to perform, or even

whether to perform, the combination of data from the claimed variant alleles, and translation of this data into a subject-specific treatment course of action.

Nor do the Examiner's cited references teach or suggest a computer program, for example, that: generates a report for display to a clinician (claim 76) in print (claim 77) or on a computer monitor (claim 78); receives, processes and transmits data from a subject, a clinical laboratory and medical personnel (claim 79) using an electronic communication system; directs the fate of the genetic data according to the subject's preference (claim 82); or that directs a user to a specific perioperative clinical pathway for a subject (claim 83).

As well, none of the Examiner's references teach or suggest kits with reagents sufficient to detect variant alleles in *F5, F2, CACNA1S, MTR, MTRR,* and *CBS.* What is missing from the Examiner's references is a disclosure of primers and probes specific to these genes and these alleles. As well, none of the Examiner's references teach reagents sufficient to detect the presence or absence of variant alleles in each of *BChE, CYP2D6, F5, F2, CACNAIS, MTHFR, MTR, MTRR, CBS, TNF$\alpha$* and *TNF$\beta$* of claims 108-110.

Moreover, none of the Examiner's references, alone or in combination, teach or suggest kits sufficient to detect the presence or absence of variant alleles in two or more genes, or even kits sufficient to detect of the presence or absence of variant alleles in a single gene.

Ahern teaches kits for, for example: expression of proteins from cloned genes; for labeling DNA or RNA probes with radioisotopes or fluorescent tags; for labeling oligonucleotides by conjugation with alkaline phosphatase; for small-scale purifications; for isolating cells from whole blood for cytotoxicity assays; for painting chromosomes with fluorescent dyes; for cryopreserving mouse embryos; and for signal transduction research. Ahern does not teach or suggest kits sufficient to detect variation in one gene. Ahern does not teach or suggest kits sufficient to detect variation in two genes. Ahern does not teach or suggest kits sufficient to detect variation in two or more genes selected from a group of genes, or in two or more genes associated with two or more conditions selected from the group consisting of *BChE, CYP2D6, F5, F2, CACNA1S, MTHFR, MTR, MTRR, CB, TNF$\alpha$ and TNF$\beta$.*

To the extent that Ahern contemplates characterization of DNA, Ahern teaches directly away from the use of such kits:

> "Some tasks~such as constructing genomic libraries, designing primer sets for sequencing, or synthesizing nucleic acids or peptides~are so daunting that for many scientists it makes more sense to hire out." (Ahern, page 5). (Emphasis added).

Because the Examiner's references individually and in combination fail to teach all elements of claims 72-105, the Examiner has failed to establish the *prima facie* obviousness of the claims. In view of the above, the Applicants respectfully request that this rejection be withdrawn.

**2. The Examiner has Failed to Establish the Obviousness of Claims 106 and 107**

Contrary to the Examiner's assertion, the Examiner's combination of references fails to teach all elements of the claims. For example, none of the Examiner's references teach or suggest kits with component sufficient to detect variant alleles in *F5, F2, CACNA1S, MTR, MTRR,* and *CBS.* What is missing from the Examiner's references is a disclosure of primers and probes specific to these genes. As well, none of the Examiner's references teach or suggest kits with component parts sufficient to detect the presence or absence of variant alleles in each of *BChE, CYP2D6, F5, F2, CACNAIS, MTHFR, MTR, MTRR, CBS, TNF$\alpha$* and *TNF$\beta$* of claims 111 and 112.

Moreover, none of the Examiner's references, alone or in combination, teach or suggest kits sufficient to detect the presence or absence of variant alleles in two or more genes, or even kits sufficient to detect the presence or absence of variant alleles in a single gene.

Ahern teaches kits for, for example: expression of proteins from cloned genes; for labeling DNA or RNA probes with radioisotopes or fluorescent tag; for labeling oligonucleotides by conjugation with alkaline phosphatase; for small-scale purification; for isolating cells from whole blood for cytotoxicity assay; for painting chromosomes with fluorescent dyes; for cryopreserving mouse embryos; and for signal transduction

research. Ahern does not teach or suggest kits sufficient to detect variation in one gene, in two genes, or in two or more genes associated with two or more conditions selected from the group consisting of *BChE, CYP2D6, F5, F2, CACNA1S, MTHFR, MTR, MTRR, CB, TNFα and TNFβ.*

To the extent that Ahern contemplates characterization of DNA, Ahern teaches directly away from the use of such kits:

> "Some tasks ~ such as constructing genomic libraries, designing primer sets for sequencing, or synthesizing nucleic acids or peptides ~ are so daunting that for many scientists it makes more sense to hire out." (Ahern, page 5). (Emphasis added).

Because the Examiner's references individually, and in combination, fail to teach or suggest all elements of claims 106-107, the Examiner has failed to establish the *prima facie* obviousness of the claims. In view of the above, the Applicants respectfully request that this rejection be withdrawn.

**B. The Examiner's References Does Not Provide a Suggestion or Motivation to Combine the Recited Elements**

In the Office Action of September 12, 2006 the Examiner argues:

> "The ordinary artisan would have been motivated to have packaged reagents needed to screen individuals to determine the genetic composition of the individuals to provide individualized diagnosis and to avoid any fatal reaction to the anesthesia in a quick and efficient cost effective kit." (Office Action of September 12, 2006, page 7).

And:

> "Finally, Ahern teaches reagent kits offer scientists good return on investment. Ahern teaches kits save time and money because the kits already come prepared."

(Office Action of September 12, 2006, page 5)

In relying upon these arguments to support a *prima facie* case of obviousness, the Examiner has made a number of errors. First, The Examiner's acknowledgment of the benefits of the claimed invention made after the Examiner was in possession of the Specification and claims does not, and can not, substitute for substantial evidence of what an artisan of ordinary skill would or would not have been motivated to do at the time the invention was made. To the contrary, the in the Office Action of September 12, 2006 the Examiner improperly establishes new standards of the ordinary artisan's motivation to combine references *i.e.*, to "save time and money", and "to avoid any fatal reaction."

The Applicant reminds the Examiner that the Examiner's standards are not those recognized by the law and by the CAFC. In *In re Sang Su Lee* the Court of Appeals for the Federal Circuit expressly prohibits this kind of substitution of the benefits of an invention for objective evidence of an invention's obviousness by the Patent and Trademark Office.[3] On multiple occasions in the prosecution of the present application the Examiner has had the opportunity to address this holding, and has never done so.

Second, *prima facie* obviousness based on a combination of references requires that the prior art provide "a reason, suggestion, or motivation to lead an inventor to combine those references."[4] "The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence"."[5] The suggestion to combine prior art references must come from the cited references, not from the Applicants's disclosure.[6]

As set forth in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000):

> "A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one

---

3 *In Re Sang Su Lee*, 277 F.3d 1338, 1341, USPQ2d 1430, 1433. (Fed. Cir. 2002).

4 *Pro-Mold and Tool Co. v. Great Lakes Plastics Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629 (Fed. Cir. 1996).

5 *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

6 *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1998)

> of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."
>
> Most if not all inventions arise from a combination of old elements. . . . Thus, every element of a claimed invention may often be found in the prior art. . . . However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. . . . Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant."

These holdings have never been addressed by the Examiner in the prosecution of the present application despite multiple opportunities for the Examiner to do so.

The Applicant asserts that the Examiner's rejection does not establish the requisite suggestion in the art to combine elements disclosed in the Examiner's references. "A rejection cannot be predicated on the mere identification . . . of individual components of claimed limitations. Rather, particular findings must be made as to the reasons the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed."[7] The need for a specific suggestion (*i.e.*, more so than to "save time and money") in the cited references is absolute: "The factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions and cannot be dispensed with."[8]

Contrary to legal requirement, the Examiner's conclusory and unsupported assertions in the Office Action of September 12, 2006 regarding the motivation of an ordinary artisan in view of LaDu, 1995, LaDu, 1991, Pharmacogenetics, Evans, Hoon,

---

7 *Ecolochem*, 227 F.3d, 1361, 1375, 56 USPQ2d 1065, 1076, quoting *Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317.

8 *In Re Sang Su Lee*, 277 F.3d 1338, 1341, USPQ2d 1430, 1433. (Fed. Cir. 2002).

Hacia and Ahern is not evidence. The Examiner does not, and can not, point to which specific teachings in of LaDu, 1995, LaDu, 1991, Pharmacogenetics, Evans, Hoon, Hacia and Ahern motivate the ordinary artisan to combine the claimed elements thereby arriving at the kits of the claimed invention. None of the Examiner's references, alone or in combination, teach or suggest kits sufficient to detect genetic variation in genes of the group consisting of *BChE, CYP2D6, F5, F2, CACNAIS, MTHFR, MTR, MTRR, CBS, TNF$\alpha$* and *TNF$\beta$*. Indeed, none of the Examiner's references, alone or in combination, teach or suggest kits sufficient to detect genetic variation in two genes, or even one gene.

Moreover, the Examiner has never provided evidence of a teaching or suggestion that would motivate the ordinary artisan to produce the computer programs of the claimed invention. For an ordinary artisan to produce a computer program with software that, for example, translates genetic data into "a risk assessment for treatment options" (claim 74), or "recommendations for treatment options" (claim 75), the artisan must first appreciate the value of doing so. None of the Examiner's cited references alone, or in combination, provides evidence of such appreciation.

In assessing the differences between the subject matter sought to be patented and the alleged prior art, section 103 requires the Examiner to appraise the claimed invention "as a whole". Typically inventions are new combinations of existing principles or features.[9] The "as a whole" instruction to the Examiner in title 35 prevents evaluation of the invention piece-by-piece. Without this statutory requirement, the Examiner's obviousness assessment risks breaking an invention into its component parts (X + Y + Z), then find a prior art reference containing X, another containing Y, and another containing Z, and on that basis, and no other, declaring the invention obvious. In the Final Office Action of September 12, 2006 the Examiner has fallen into this trap.

The Examiner's hindsight reasoning in using the invention as a roadmap to locate alleged prior art components discounts the value of combining existing features and principles in a new way to achieve a new result, *i.e.*, the kits of the claimed invention. The Court of Appeals for the Federal Circuit has provided further assurance of an "as a whole" assessment of the invention under §103 by requiring a showing by the Examiner

---

9 *Envtl. Designs, Ltd. V. Union Oil Co.*, 713 F.2d 693, 698 (Fed. Cir. 1983) (noting that "virtually all
[inventions] are combinations of old elements").

that the prior art provide "a reason, suggestion, or motivation to lead an inventor to combine those references."[10] "The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence"."[11] The suggestion to combine prior art references must come from the cited references, not from the applicant's disclosure.[12] The Examiner must show a suggestion or motivation before the invention itself to make the new combination. In the prosecution of the present application the Examiner has never considered, acknowledged, or even mentioned these holdings despite numerous opportunities to do so.

In the Office Action of September 12, 2006 the Examiner has constructed a conclusion-oriented discussion that typically accompanies a hindsight analysis. Each of the Examiner's references is at best a piece or component of the claimed invention. None of the Examiner's cited references teaches the kits of the claimed invention itself. The Examiner has made no factual finding of a motivation to combine the teachings of LaDu, 1995, LaDu, 1991, Pharmacogenetics, Evans, Hoon, Hacia and Ahern. Contrary to legal requirement, the Examiner's conclusory and unsupported assertion is not evidence. The Examiner does not, and can not, point to which specific teachings in the cited references motivate the ordinary artisan to combine the claimed elements thereby arriving at the kits of the claimed invention.

Because the Examiner has failed to establish motivation to modify LaDu, 1995, LaDu, 1991, Pharmacogenetics, Evans, Hoon, Hacia and Ahern to arrive at the claimed invention, the Examiner has failed to establish a *prima facie* case of obviousness. In view of the above, the Applicant respectfully requests that the rejection be withdrawn.

---

10 *Pro-Mold and Tool Co. v. Great Lakes Plastics Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629 (Fed. Cir. 1996).

11 *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

12 *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1998)

## III. CONCLUSION

It is respectfully submitted that Applicant's claims as should be passed into allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

Dated: 3/12/07

David A. Casimir
Registration No. 42,395

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
(608) 218-6900